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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 539.

JOSHUA F. BAILEY, COLLECTOR OF INTERNAL REVENUE, PLAINTIFF IN ERROR,

vs.

LUTHER C. CLARK, JOHN D. MAXWELL, DAVID CRAWFORD, JR., GEORGE C. CLARK, AND H. E DODGE.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

FILED OCTOBER 3, 1874.

Oct. Term, 1874

Affirmed

SUPREME COURT OF THE UNITED STATES.

No. 539.

JOSHUA F. BAILEY, COLLECTOR OF INTERNAL REVENUE, PLAINTIFF IN ERROR,

vs.

LUTHER C. CLARK, JOHN D. MAXWELL, DAVID CRAWFORD, JR., GEORGE C. CLARK, AND H. E. DODGE.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

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a UNITED STATES OF AMERICA, ss:

The President of the United States of America to the judges of the circuit court of the United States for the southern district of New York, greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you, or some of you, between Joshua F. Bailey, collector of internal revenue for the thirty-second internal-revenue district in the city of New York, plaintiff in error, and Luther C. Clark, John D. Maxwell, David Crawford, jr., George C. Clark, and Harry E. Dodge, defendants in error, a manifest error hath happened, to the great damage of the said Joshua F. Bailey, collector, &c., for the 32d internal-revenue district in the city of New York, as is said, and as appears by his complaint: we, being willing that such error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the justices of the Supreme Court of the United States, at the Capitol, in the city of Washington, together with this writ, so that you have the same at the said place, before the justices aforesaid, on the second Monday of October next, that, the record and proceedings aforesaid being inspected, the said justices of the Supreme Court may cause further to be done therein, to correct that error, what of right and according to the law and custom of the United States ought to be done.

Witness the honorable Morrison R. Waite, Chief-Justice of the Supreme Court of the United States, this sixth day of August, in the year of our Lord one thousand eight hundred and seventy-four, and of the Independence of the United States the ninety-ninth.

KENNETH G. WHITE,
Clerk of the Circuit Court of the United States of America for the Southern District of New York, in the Second Circuit.

The foregoing writ is allowed.

SAML. BLATCHFORD.

August 6, 1874.

(Indorsed:) U. S. Supreme Court. Joshua F. Bailey, collector of internal revenue, &c., plaintiff in error, vs. Luther C. Clark and others, defendants in error. Writ of error. George Bliss, U. S. attorney. Filed Aug. 8, 1874.

UNITED STATES OF AMERICA,
Southern District of New York, ss:

b I, Kenneth G. White, clerk of the circuit court of the United States for the southern district of New York, in the second circuit, by virtue of the foregoing writ of error and in obedience thereto, do hereby certify that the following pages, numbered from one to thirty-three, inclusive, contain a true and complete transcript of the record and proceedings had in said court in the case of Joshua F. Bailey, collector of internal revenue, &c., plaintiff in error, versus Luther C. Clark and others, defendants in error, as the same remain of record and on file in said office.

In testimony whereof I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district of

New York, in the second circuit, this second day of October, in the year of our Lord one thousand eight hundred and seventy-four, and of the Independence of the said United States the ninety-ninth.

[SEAL.] KENNETH G. WHITE, *Clerk.*

1 United States circuit court for the southern district of New York.

LUTHER C. CLARK, JOHN D. MAXWELL, DAVID Crawford, junior, George C. Clark, and Harry E. Dodge,

vs.

JOSHUA F. BAILEY, COLLECTOR OF INTERNAL revenue for the thirty-second internal-revenue district in the city of New York.

Pleas in the circuit court of the U. S. for the so. dist. of N. Y. in the second circuit of the term of October, 1869, to wit, on the 7th day of March, 1870.

Witness the Hon. Lewis B. Woodruff, circuit judge.

KENNETH G. WHITE,
Clerk.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Be it remembered, that heretofore, to wit, on the 7th day of March, 1870, in the circuit court of the United States of America for the southern district of New York, came Luther C. Clark, John D. Maxwell, David Crawford, junior, George C. Clark, and Harry E. Dodge, by Charles D. Burrill, their attorney, and brought into the said court their certain declaration against Joshua F. Bailey, collector of internal revenue for the thirty-second internal-revenue district in the
2 city of New York, being in custody, &c., of a plea of trespass on the case upon the premises, and which declaration follows in these words, that is to say:

3 United States circuit court.

LUTHER C. CLARK, JOHN D. MAXWELL, DAVID Crawford, jr., George C. Clark, and Harry E. Dodge,

against

JOSHUA F. BAILEY, COLLECTOR OF INTERnal revenue for the thirty-second internal-revenue district, in the city of New York.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

The above-named plaintiffs come here into court, and by Charles D. Burrill, their attorney, suggest and give this court now here to understand and be informed that, heretofore, to wit, on the second day of March last past, an action was commenced in the supreme court of the State of New York, according to the laws of said State, and the rules and practice of said court in such case made and provided, in favor and in the name of said plaintiffs against the defendant herein, upon and for the same cause of action hereinafter set forth, and summons therein was filed in the clerk's office of said supreme court.

That the defendant afterward, by his attorney, duly appeared
4 in said action, and such proceedings were thereupon had that, afterward, on the seventh day of March, in the year of our Lord one thousand eight hundred and seventy, the said action was in due form of law removed by writ of certiorari for further prosecution and trial into this court, according to the act of Congress in such case made and provided, and the clerk of the said supreme court did thereupon return the said writ with the summons aforesaid, and did file the same in this court according to the course and practice of this court, which allegations and suggestions the defendant does not deny, but admits the same to be true.

Wherefore let the further proceedings and trial of this action against the defendant be continued in this court.

And the plaintiffs accordingly, by their attorney aforesaid, complain of the defendant herein in a plea of trespass on the case.

For that whereas the said defendant, on or about the second day of March, one thousand eight hundred and seventy, at the city of
5 New York, in the southern district aforesaid, was indebted to the said plaintiffs in the sum of fifteen thousand dollars, lawful money of the United States of America, before that time lent and advanced by the plaintiffs to the said defendant, and at the special instance and request of said defendant; and for other money by the said plaintiffs before that time paid, laid out, and expended for the said defendant, and at the request of said defendant; and for other money by the said defendant before that time had and received, to and for the use of the said plaintiffs.

And being so indebted the said defendant, in consideration thereof, afterwards, to wit, on the same day and year, and at the place aforesaid, undertook and then and there faithfully promised the said plaintiffs well and truly to pay unto the said plaintiffs the said sum of money in this court mentioned when the defendant should be thereunto afterward requested.

And whereas, also, the said defendant afterwards, to wit, on the same day and year, and at the place aforesaid, accounted together
6 with the said plaintiff of and concerning divers other sums of money before that time due and owing from the said defendant to the said plaintiffs, and then and there being in arrear and unpaid, and upon such accounting the said defendant then and there was found to be in arrear and indebted to the said plaintiffs in the further sum of fifteen thousand dollars of lawful money, as aforesaid, and being so found in arrear and indebted to the said plaintiffs, the said defendant, in the consideration thereof, afterwards, to wit, on the same day and year, and at the same place aforesaid, undertook, and then and there faithfully promised the said plaintiffs, well and truly to pay unto the said plaintiffs the said sum of money last mentioned, when the said defendant should be thereunto afterwards requested.

Nevertheless, the said defendant, although often requested, &c., has not yet paid the said several sums of money above mentioned, or any or either of them, or any part thereof, to the said plaintiffs, but to
7 pay the same, or any part thereof to the said plaintiffs, the said defendant has hitherto wholly refused and still does refuse, to the damage of the said plaintiffs of fifteen thousand dollars, and thereof the plaintiffs bring suit, and so forth.

CHARLES D. BURRILL,
Attorney for Plaintiff.

8 U. S. circuit court.

JOSHUA F. BAILEY
ads.
LUTHER C. CLARK AND OTHERS.

And the said Joshua F. Bailey, defendant in this suit, by Edwards Pierrepont, his attorney, comes and defends the wrong and injury, when, &c., and says that he did not undertake or promise in manner and form as the said plaintiff hath above thereof complained against him. And of this he puts himself upon the country. (And the said plaintiff doth the like, &c.)

EDWARDS PIERREPONT,
U. S. Atty.

9 Therefore the issues above joined were ordered to be tried at a circuit court appointed to be held at the court-house in the city of New York, in and for the circuit aforesaid, on the first Monday of April, 1870; at which day and place the parties appeared by their respective attorneys, but the issues were not tried, and the same were continued until the first Monday of April, 1874, at the place last aforesaid, at which day and place last above mentioned, before the honorable Lewis B. Woodruff, circuit judge, came the parties aforesaid by their attorneys above mentioned, and thereupon the said parties did, by their said attorneys, in open court, waive a jury, and consent that the issues herein before joined might be tried and determined by the court without the intervention of a jury, and did then and there file a stipulation in writing with the clerk of the court to that effect.

That in pursuance of the said stipulation so filed, the said issues came on to be tried before the honorable Lewis B. Woodruff, circuit
10 judge aforesaid, without a jury, on the sixteenth day of April, 1874, at the court-house in the city of New York, and thereupon the said circuit judge having heard the allegations and proofs submitted by the respective parties, did render his findings and decision upon the issues aforesaid, which said findings were duly filed with the clerk of the said circuit court at the city of New York, and are in the words and figures following, to wit:

United States circuit court for the southern district of New York.

LUTHER C. CLARK, JOHN D. MAXWELL, DAVID Crawford, junior, George C. Clark, and Harry E. Dodge
against
JOSHUA F. BAILEY, COLLECTOR OF INTERNAL revenue for the thirty-second internal-revenue district in the city of New York.

This action was brought to trial at a circuit court of the United States held in and for the southern district of New York, at the city of New York, on the sixteenth day of April, 1874, before the honorable
11 Lewis B. Woodruff, circuit judge, who having heard the allegations and proofs submitted by the respective parties, doth, on said proofs, and the admissions made upon the trial by the respective parties, find and decide as follows:

First. That, at the several times hereinafter mentioned, and at the

time of the commencement of this action, the plaintiffs were partners under the name of Clark, Dodge and Company, and, as such, were bankers, and were also doing business as brokers in the city of New York; and that, at the time of the payment by the plaintiffs to the defendant, of the several sums of money hereinafter mentioned, said defendant was the collector of internal revenue for the thirty-second internal-revenue district in the city of New York.

Second. That the said plaintiffs, from time to time, and at various times between the first of April, 1869, and the first of February, 1870, made returns, as required by law, to the assessor of internal revenue of the United States in and for said district, of the amount of the capital of said plaintiffs employed in their said business of banking, and
12 of the amount of moneys deposited with them by their customers, and that said assessor insisted, against the objection and protest made by the said plaintiffs, that all moneys borrowed by said plaintiffs from time to time, and temporarily, in the ordinary course of their business, formed a part of the capital of said plaintiffs employed in the business of banking, and that they were to be assessed, in respect thereto, at the rate of one twenty-fourth of one per cent., and the said assessor thereupon included the sums of money so borrowed from time to time, and temporarily, in the ordinary course of their business, and assessed them at the rate aforesaid, as a part of the capital employed by the plaintiffs in the business of banking; and that the several amounts of money so borrowed by said plaintiffs, and included in and assessed as a part of their capital, and the amount of tax so assessed thereon, are as follows, that is to say: during the month of April, 1869, $1,773,000, on which the tax assessed at said rate was $738.75;
13 during the month of May, 1869, $1,783,388, on which the tax, assessed at said rate, was $743.08; during the month of June, 1869, $1,638,433, on which the tax, assessed at said rate, was $682.68; during the month of July, 1869, $1,762,322, on which the tax, assessed at said rate, was $734.20; during the month of August, 1869, *on which the tax, assessed at said rate, was* $1,389,542, on which the tax, assessed at said rate, was $578.97; during the month of September, 1869, $1,054,369, on which the tax, assessed at said rate, was $439.32; during the month of October, 1869, $1,284,968, on which the tax, assessed at said rate, was $535.40; during the month of November, 1869, $1,111,400, on which the tax, assessed at said rate, was $463.08; during the month of December, 1869, $1,391,806, on which the tax, assessed at said rate, was $579.92; and during the month of January, 1870, $1,525,516, on which the tax, assessed at said rate, was $635.63.

14 Third. That the said defendant, so being such collector as aforesaid, levied and collected from said plaintiffs, and compelled them to pay, against their will, the said several amounts so assessed as taxes as last aforesaid, at the dates and in the amounts hereinafter stated, that is to say, on July 2nd, 1869, $738.75 and $743.08; on August 26th, 1869, $682.68; and on March 1st, 1870, $734.20, $578.97, $439.32, $535.40, $463.08, $579.92, and $635.63; and that said several amounts were paid by said plaintiffs to the said defendant on the said several days, against their will; and at the time of said payments, respectively, the said plaintiffs did protest against the legality of said assessment, and their liability to be assessed in respect thereto, or to pay said tax thereon, and claimed that such moneys, so borrowed from time to time, and temporarily as aforesaid, and so included in, and assessed as a part of their capital, was not capital employed in the business of banking, and was not liable to such assessment or tax.

Fourth. That the sums so paid, as last aforesaid, with the
15 interest thereon from the time of such payments, respectively, to the day of the date of this decision, amount to eight thousand and ninety dollars and eighty cents.

Fifth. That prior to the commencement of this action an appeal was duly taken on the part of the said plaintiffs to the Commissioner of Internal Revenue from the action and decision of the assessor as aforesaid, and that all the preliminary steps, required by law to be taken by the plaintiffs before the commencement of this action, were taken by them; and that this action was brought within the time limited by law, after the decision of such Commissioner upon said appeal.

And from the foregoing facts, the said justice doth find and decide as follows:

First. That the money borrowed from time to time, and temporarily, by the said plaintiffs in the ordinary and usual course of their business, was not capital employed in the business of banking; and that the said plaintiffs were not liable to be assessed for or in respect to said
16 moneys as a part of their said capital; and that the assessment so made and the tax of one twenty-fourth of one per cent. levied thereon as aforesaid, and the collection of said tax by said defendant, were illegal and unauthorized; and that the payment of said sums by said plaintiffs, at the times hereinbefore stated, was involuntary, and made under compulsion.

Second. That the plaintiffs are entitled to recover against the said defendant the amounts so paid by them for or on account of said tax so illegally assessed as aforesaid, which amounts, with interest as hereinbefore stated, amount to the sum of eight thousand and ninety dollars and eighty cents.

Therefore, it is considered that the said plaintiffs do recover against the said defendant their damages to the amount so awarded as last aforesaid, to wit: eight thousand and ninety dollars and eighty cents, and also one hundred and one dollars and forty-four cents, for their
17 costs and charges, by the said court now here adjudged to the said plaintiffs; which said damages, costs, and charges, in whole, amount to eight thousand one hundred and ninety-two dollars and twenty-four cents.

Judgment signed this 5th day of August, 1874.

KENNETH G. WHITE,
Clerk.

(Indorsed:) United States circuit court, S. D. of N. Y. Luther C. Clark et al. *vs.* Joshua F. Bailey, collector, &c., for the 32nd int. rev. dist., in the city of New York. Judgment-roll. Charles D. Burrill, atty. for plaintiffs. Filed Aug. 5, 1874.

18 U. S. circuit court, southern district of New York.

LUTHER C. CLARK, JOHN D. MAXWELL, DAVID Crawford, jr., George C. Clark, and Harry E. Dodge,

against

JOSHUA F. BAILEY, COLLECTOR OF INTERNAL revenue for the thirty-second internal-revenue district of the city of New York.

This cause came on for trial at the April term of the United States circuit court for the southern district of New York, in the second cir-

cuit, to wit, on the 16th and 17 days of April, in the year 1874, before the honorable Lewis B. Woodruff, the circuit judge, a jury having been duly waived by the respective parties, pursuant to the act of Congress.

Witnesses were examined on the part of the plaintiffs and cross-
19 examined on the part of the defendant.

"The plaintiffs' counsel insisted that said testimony established the fact that the said plaintiffs, at the times of the several transactions in the decision and findings hereinafter mentioned, were not bankers within the true intent and meaning of the act of Congress of June 10, 1864, as amended by the act of Congress of July 13, 1866, and were not engaged in the business of banking within the intent and meaning of the said acts, but that the said plaintiffs were brokers, engaged in carrying on the business of brokers, as defined and within the meaning of the said act, and asked the court so to rule and decide, but the court declined so to do, and did rule, for the purposes of the trial, that plaintiffs were bankers, and were also doing business as brokers within the meaning of the said acts."

From the testimony the court found the facts set forth in the findings hereinafter stated.

20 Thereupon defendant's counsel moved the court, on the facts so found, that judgment be entered for defendant, and plaintiffs' counsel moved that judgment be entered for plaintiffs. After argument and due deliberation the court denied said motion of defendant's counsel, and defendant's counsel duly excepted.

The court then directed judgment to be entered for the plaintiffs, to which direction defendant's counsel duly excepted.

The decision of the court refusing judgment for defendant and directing judgment for the plaintiffs, and the said findings of fact, filed by the court upon the conclusion of said trial, are as follows:

21 United States circuit court for the southern district of New York.

LUTHER C. CLARK, JOHN D. MAXWELL, DAVID Crawford, jr., George C. Clark, and Harry E. Dodge,

against

JOSHUA F. BAILEY, COLLECTOR OF INTERNAL revenue for the thirty-second internal-revenue district in the city of New York.

This action was brought to trial at a circuit court of the United States, held in and for the southern district of New York, at the city of New York, on the 17th and 18th days of April, 1874, before the honorable Lewis B. Woodruff, circuit judge, who, having heard the allegations and proofs submitted by the respective parties, doth, on said proofs
22 and the admissions made upon the trial by the respective parties, find and decide as follows:

First. That at the several times hereinafter mentioned, and at the time of the commencement of this action, the plaintiffs were partners under the name of Clark, Dodge and Company, and as such were bankers; and were also doing business as brokers in the city of New York; and that at the time of the payment by the plaintiffs to the defendant of the several sums of money hereinafter mentioned said defendant was collector of internal revenue for the thirty-second internal-revenue district in the city of New York; that the place of business of defendants

was, at the times hereinafter mentioned, situated in the 32nd collection-district of the State of New York.

Second. That the said plaintiffs, from time to time and at various times between the 1st of April, 1869, and the 1st of February, 1870, made returns as required by law to the assessor of internal rev-
23 enue of the United States, in and for said district, of the amount of the capital of said plaintiffs employed in their said business of banking, and of the amount of moneys deposited with them by their customers; and that said assessor insisted, against the objection and protest made by the said plaintiffs, that all moneys borrowed by said plaintiffs, from time to time and temporarily in the ordinary course of their business, formed a part of the capital of said plaintiffs employed in the business of banking, and that they were to be assessed in respect thereto at the rate of one twenty-fourth of one per cent.; and the said assessor thereupon included the sums of money so borrowed from time to time and temporarily in the ordinary course of their business, and assessed them at the rate aforesaid as a part of the capital employed by the plaintiffs in the business of banking, and duly transmitted the assessment-roll containing said assessment to the defendant; and that
24 the several amounts of money so borrowed by said plaintiffs, and included in and assessed as a part of their capital, and the amount of tax so assessed thereon, exclusive of the amount thereof invested in the bonds and securities issued by the Government of the United States, are as follows, that is to say: During the month of April, 1869, $1,773,000, on which the tax assessed at said rate was $738.75; during the month of May, 1869, $1,783,388, on which the tax assessed at said rate was $743.08; during the month of June, 1869, $1,638,433, on which the tax assessed at said rate was $682.68; during the month of July, 1869, $1,762,322, on which the tax assessed at said rate was $734.20; during the month of August, 1869, $1,389,542, on which the tax assessed at said rate was $578.97; during the month of September, 1869, $1,054,367, on which the tax assessed at said rate was $439.32;
25 during the month of October, 1869, $1,284,968, on which the tax assessed at said rate was 535.40; during the month of November, 1869, 1,111,400, on which the tax assessed at said rate was $463.08; during the month of December, 1869, 1,391,806, on which the tax assessed at said rate was $579.92; and during the month of January, 1870, 1,525,516, on which the tax assessed at said rate was 635.63.

Third. That the said defendant, so being such collector as aforesaid, levied and collected from said plaintiffs, and compelled them to pay, against their will, the said several amounts so assessed as taxes as last aforesaid, at the dates and in the amounts hereinafter stated, that is to say: On July 2nd, 1869, $738.75, and 743.08; on August 26th, 1869, $682.68, and on March 1st, 1870, $734.20, $578.97, $439.32, 535.40, $463.08, $579.92, and $635.63, and that said several amounts were paid by the said plaintiffs to the said defendant on the said several days against their will; and at the time of said payments respectively, the
26 said plaintiffs did protest against the legality of said assessments, and their liability to be assessed in respect thereto, or to pay said tax thereon, and claimed that such moneys, so borrowed from time to time, and temporarily as aforesaid, and so included in and assessed as a part of their capital, was not capital employed in the business of banking, and was not liable to such assessment or tax.

Fourth. That the sums so paid as last aforesaid, with the interest thereon from the time of such payments respectively, to the day of the

date of this decision, amount to eight thousand and ninety dollars and eighty cents.

Fifth. That prior to the commencement of this action, an appeal was duly taken, on the part of the said plaintiffs, to the Commissioner of Internal Revenue, from the action and decision of the assessor as aforesaid, and that all the preliminary steps required by law to be taken by the plaintiffs before the commencement of this action, were taken
27 by them, and this action was brought within the time limited by law, after the decision of such Commissioner upon said appeal.

And from the foregoing facts, the said justice doth find and decide as follows:

First. That the money borrowed from time to time, and temporarily by the said plaintiffs, in the ordinary and usual course of their business, was not capital employed in the business of banking, and that the said plaintiffs were not liable to be assessed for in respect to said moneys, as a part of their said capital; and that the assessment so made, and the tax of one twenty-fourth of one per cent. levied thereon as aforesaid, and the collection of said tax by said defendant, were illegal and unauthorized, and that the payment of said sums by said plaintiffs, at the times hereinbefore stated, was involuntary, and made under compulsion.

28 Second. That the plaintiffs are entitled to recover against the said defendant the amounts so paid by them, for or on account of said tax, so illegally assessed as aforesaid, which amounts, with interest as hereinbefore stated, amount to *to* the sum of eight thousand *thousand* and ninety dollars and eighty cents.

(Signed) L. B. WOODRUFF,
Circuit Judge.

29 And inasmuch as the aforesaid several matters of fact and of law do not appear by the records of said trial and judgment, therefore on the prayer of the said defendant, by his counsel, the said judge has signed and sealed this bill of exceptions this 30th day of September, 1874, as yet of said April term.

(Signed) L. B. WOODRUFF. [L. S.]

(Endorsed:) U. S. circuit court. Luther C. Clark et al. *vs.* Joshua F. Bailey. Bill of exceptions. George Bliss, deft.'s atty. Filed Oct. 1st, 1874.

30 U. S. circuit court.

LUTHER C. CLARK ET AL. *vs.* JOSHUA F. BAILEY. } Assignment in error.

And now the said Joshua F. Bailey, by George Bliss his attorney, says that in the record and proceedings aforesaid there is manifest error in this, to wit, that by the said record aforesaid, it appears that the judgment aforesaid given was given for the said Luther C. Clark et al. against the said Joshua F. Bailey, whereas by the law of the land the said judgment ought to have been given for the said Joshua F. Bailey against the said Luther C. Clark et al. And the said Joshua F. Bailey prays that the judgment aforesaid may be reversed, annulled, and altogether done for nothing, and that he may be restored to all things which he has lost by reason of the said judgment.

GEORGE BLISS,
Atty. for Bailey, Plff. in Error.

31 (Endorsed:) U. S. circut court. Luther C. Clark & al. *vs.* Joshua F. Bailey. Assignment in error. George Bliss, deft.'s atty. Due service. Copy within is hereby admitted. Burrill, Davison & Burrill, plffs.' atty. Filed October 1, 1874.

32 UNITED STATES OF AMERICA, *ss:*

To Luther C. Clark, John D. Maxwell, David Crawford, jr., George C. Clark, and Harry E. Dodge, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington, on the second Monday of October, 1874, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the southern district of New York, wherein Joshua F. Bailey, collector of internal revenue, &c., is plaintiff in error and you are defendants in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the honorable Samuel Blatchford, one of the judges of the circuit court of the United States for the southern district of New York, this sixth day of August, in the year of our Lord one thousand eight hundred and seventy-four.

SAML. BLATCHFORD, *D. J.*

(Indorsed:) U. S. Supreme Court. Joshua F. Bailey, collector of internal revenue, &c., plaintiff in error, vs. Luther C. Clark and others, defendants in error. Citation. George Bliss, U. S. Attorney.

Due service of the citation, of which the within is a copy, is hereby admitted. August 8th, 1874.

CHARLES D. BURRILL,
Attorney for Defendants in Error.

Filed August 8, 1874.

(Indorsement on cover:) No. 539. S. New York, C. C. U. S. Joshua F. Bailey, collector of internal revenue, plaintiff in error, *vs.* Luther C. Clark, John D. Maxwell, David Crawford, jr., George C. Clark, & H. E. Dodge. Filed 3rd October, 1874.